



New Jersey Protection and Advocacy, Inc.

210 South Broad Street • 3rd Floor • Trenton, New Jersey 08608

Sarah W. Mitchell, R.N., M.S.W., J.D.

Executive Director

Via Facsimile at 410-966-2830

September 22, 2004

Hon. Jo Anne Barnhart, Commissioner
Social Security Administration
P.O. Box 17703
Baltimore, Maryland 21235-7703

Re: Proposed Rules: Expanded Authority for Cross-Program Recovery of Benefit
Overpayments
20 CFR Parts 404, 408 and 416
[Regulations No. 4, 8 and 16]
RTN 0960-AG06

Dear Commissioner Barnhart:

New Jersey Protection and Advocacy, Inc. (NJ P&A) is the designated protection and advocacy program for people with disabilities in New Jersey. NJ P&A's Protection and Advocacy for Beneficiaries of Social Security (PA-BSS) program appreciates your consideration of the following comments when promulgating final rules concerning the cross-program recovery of benefit overpayments.

NJ P&A welcomes the Social Security Administration's initiatives to save program funds through cross-program recovery. NJ P&A's comments focus on the pre-recovery notice requirements found in Sections 404.540(a), 408.932(a), and 416.574(a), which in some cases might have an unintended effect of increasing program costs by discouraging beneficiaries from returning to work.

When a beneficiary with an alleged work-related overpayment receives a notice of overpayment, the notice should include sufficient information to permit the beneficiary to evaluate the information SSA is using to claim that there has been an overpayment, as well as the options available to the beneficiary. This information includes:

- how the overpayment occurred,
- how the overpayment was calculated,
- the amount of the overpayment,
- the time period covered by the overpayment, and
- detailed and comprehensive information about the beneficiary's options for appeal or repayment.

New Jersey's designated protection and advocacy system for individuals with disabilities.

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The proposed regulations would only provide beneficiaries notice of one of the five needed facts (amount of overpayment). In NJP&A's experience, overpayment notices frequently do not include all of the above information.

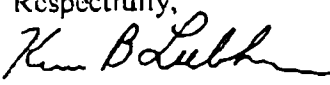
The Ticket to Work and Work Incentive Improvement Acts seek to encourage and motivate beneficiaries to return to work. Receipt of any overpayment notice is an alarming event for beneficiaries attempting a return to work. When notices do not contain sufficient information for the beneficiary to understand the reason for the alleged overpayment and what options exist, the beneficiary becomes discouraged and may abandon efforts to return to work. The beneficiary typically believes that SSA is punishing him or her for attempting work.

The final regulations should require notice to the beneficiary of all five of the above-listed facts. A beneficiary with this information can promptly determine the best course of action. Benefits Planning Assistance and Outreach (BPA&O) and PABSS programs can also assist beneficiaries much more quickly if all the relevant information is readily ascertainable from the overpayment notices.

Every beneficiary who returns to work and is able to stop collecting benefits creates significant savings for the program. Small changes in the proposed regulation's notice requirements can help preserve these savings. PABSS and BPA&O programs can also improve their services if they do not have to spend additional hours at the local Social Security office attempting to track down overpayment information that easily could have been included in the beneficiary's overpayment notice.

NJP&A is also concerned about cross-program recovery out of monthly Title XVI payments because of the impact on the beneficiary's financial circumstances. Title XVI beneficiaries are presumed to be unable to afford to repay overpayments under the law. They need only prove lack of fault in causing the overpayment to receive a waiver. SSA could easily include this information in all notices that seek recovery out of Title XVI benefits. While saving program costs is a worthy goal, it should not come at the expense of Title XVI beneficiaries who are otherwise entitled to waivers, but may not request one because they are unaware of their eligibility for a waiver.

Thank you for your consideration of these comments. Should you have any questions or concerns, NJP&A would welcome the opportunity to discuss this matter further.

Respectfully,

Kevin B. Liebkemann
Senior Staff Attorney

KBI/ptz